

Charles Evans Hughes Memorial Lecture

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Introduction

Thank you, Marc, for that kind introduction. I also want to thank you and everyone else at Hughes Hubbard & Reed who thought to invite me to speak this evening and who arranged this special event.

But I want to thank you not only for giving me the distinct and high honor of presenting this year's Charles Evans Hughes Memorial lecture, but also – on behalf of the entire legal community – for continuing this great tradition of honoring the remarkable life and legacy of such a giant in the law.

Charles Evans Hughes was so many things in life – Supreme Court Justice, Secretary of State, Governor, Presidential candidate, and of course Supreme Court Justice, again.

He was the living embodiment of what can be accomplished if you dedicate yourself, with all of your mind and energy, to being both a master *and* a servant of the law.

He was the finest expression of what can be achieved if you commit yourself, throughout a career in and out of public service, to being both high-minded and pragmatic.

Few members of the bar can ever hope to achieve even a small fraction of what he did. Most of us struggle hard to get the opportunity even to serve in one meaningful position and then struggle even more mightily to do that job well.

I thought I was lucky just to pass the bar exam on the first try.

Hughes, on the other hand, slipped in and out of hugely prominent public roles with the ease that some people slip in and out of sensible shoes.

Just to read his biography is to be humbled. And I am truly humbled today to be given the chance to deliver remarks at a lecture series that bears his name.

I want talk for a few minutes this evening about a subject that is in fact associated with the legacy of Charles Evans Hughes – namely, the subject of corruption.

Throughout his life, Hughes was known as a reformer and a fighter of corruption. In fact, it was his enterprising work as special counsel to the state legislative committee investigating New York's Gas Trust in 1905 that first propelled him into his remarkable public career.

Now, as you might imagine, corruption is a subject near and dear to a federal prosecutor's heart.

Generally speaking, these days when a prosecutor stands up to talk about his commitment to fighting corruption, he is usually understood to be speaking about public corruption.

That is, greed and graft on the part of elected or appointed officials whose responsibility is to the public and whose salaries are paid by the taxpayer.

When such officials abuse the public trust and violate their oath of office, we are rightly outraged because the misuse of power is so fundamentally offensive.

Whether by selling votes for cash or embezzling funds in their trust or otherwise monetizing their public position, we know it by a common name – corruption.

Indeed, in my office we have a thriving and successful public corruption unit, dedicated to rooting out precisely that sort of illegal activity on the part of public officials. At the moment, business is not slow.

This is vitally important work, in my view, because every public official who illegally abuses his office undermines the integrity of our government and injures citizens' faith in their democracy.

And with public confidence in government already at such low ebb, we can ill afford any additional injury.

That is why we have redoubled our efforts in the area of public corruption.

Moreover, with unprecedented funds coming to states and localities in connection with the stimulus plan, there are unprecedented opportunities for graft as well.

So we are working closely with our law enforcement partners around the state and the country to do everything we can to prevent and prosecute any such fraud.

That will only build on the work we have already been doing.

In recent times, for example, we have led investigations into fraud in the New York City Council. Working closely with Commissioner Rose Gill Hearn and the

Department of Investigation, we have taken a hard look at potential corruption in city government.

- In June of last year, the former Chief of Staff and another staffer to a New York City Council member, both pleaded guilty to charges stemming from the embezzlement of more than \$145,000 in New York City discretionary funds.
- A month later, we announced simultaneously the filing of charges and the guilty plea of another City Council member. He admitted to misdirecting City and private funds to various entities that he controlled, resulting in \$106,000 in illicit proceeds.

We have also made significant inroads into rooting out corruption in the New York State Legislature. Some of our most notable cases came to a close this past year.

- In May, a former New York State Senator from the Bronx pleaded guilty to conspiracy and mail fraud for misusing public funds to pay hundreds of thousands of dollars worth of personal expenses, including for vacation club membership fees, rent payments, home renovations, and the operation of a private cigar business.
- Less than two weeks after that guilty plea, a former New York State Assembly member and labor leader was sentenced to ten years in prison for racketeering and false statements for various corruption offenses that he committed while in office, to the tune of \$3 million in illicit proceeds.
- Finally, last year another former New York State Assemblyman pleaded guilty to engaging in a decade-long fraud against the public where he used a consulting job as a front to receive one million dollars from various entities which received favorable treatment within the state government.

It is a high priority for our Office to continue our commitment to this kind of public corruption work. And I can say that you can expect to see more tangible fruits of those efforts in the coming weeks and months.

And I say that, notwithstanding the uncertain future of the honest services statute. Whatever happens, there are other available statutes, and we intend to use them.

Corporate Corruption

Now, I want to shift gears slightly for a moment.

As I said, typically when a prosecutor utters the word “corruption,” one thinks of public officials.

But beyond the unfortunate antics of elected officials and other public servants who land in criminal hot water for breaking the public trust, there is another type of corruption I'd like to address today.

Corruption, I believe, is also a more than apt label for much of the criminal activity we are unfortunately seeing in the private sector as well.

While the elected politician who trades on his power to enrich himself undermines the integrity of our democracy and diminishes faith in our political system, the business professional who relies on his special skill to defraud others undermines the integrity of our economy and diminishes faith in our financial system.

Both are exceedingly costly. And in both cases, what you have is corruption that corrodes the public trust. And that corrosive effect extends far beyond the particular victim in a particular case.

The larger community of victims in both cases is the general public – the same public that our country relies on not only to vote in elections but also to invest in markets.

In the same way that corrupt politicians can turn off an electorate, corrupt corporate leaders can turn off the investing public.

And that is not good for democracy or capitalism.

Unfortunately, the public is being turned off at an alarming rate, especially in this down economy.

The longstanding public mistrust of Government is now extending more and more to our financial system as well – to banks, Wall Street firms, Fortune 500 companies, professional firms, and more.

Which may only be fitting, since the Government owns so many of them now.

Still, there is a genuine crisis of confidence in our system.

There is a growing lack of faith in the economic order; a lack of belief in the markets; and a lack of trust that the playing field is truly level.

That adversely affects the credit market, the housing market, and the overall economy.

Now, corporate crime and financial fraud has been with us for a long while, to be sure.

But the sheer scale of the frauds exposed in recent weeks and months has dwarfed anything we have ever seen. Indeed, as I've said before, the size and scope of many recent fraud schemes would make even the original Mr. Ponzi blush.

Another recent trend is particularly disturbing.

It is the seemingly growing proliferation of professionals who have abused their positions of power, trust, and authority to perpetrate crimes both big and small. We have recently arrested and convicted all types of licensed professionals all of whose conduct can be classified as corrupt. They include:

- Accountants,
- Mortgage Brokers,
- Investment managers,
- Loan officers, and
- Corporate executives.

Especially disturbing to this audience should be the apparently growing numbers of our own profession who have been caught acting corruptly, sadly using their law licenses as instrumentalities of crime.

I don't have with me the hard statistics, but the consensus is that cases of lawyers behaving badly are on the rise:

- Just this past January, the former principal outside attorney for Refco, was sentenced to 7 years in prison after we secured a conviction at trial for defrauding investors and lenders of more than \$2.4 billion.
- Recently, in the largest hedge fund insider trading case in U.S. history, we obtained the guilty plea of one attorney and indictments against two others for allegedly using material, non-public information about corporate clients to reap millions in illegal profits.
- Last year, an Arkansas lawyer was sentenced to more than seven years in prison for misappropriating \$9.3 million in client funds from a settlement in a securities class action.
- In October, a coordinated mortgage fraud takedown netted 41 defendants, including seven lawyers in four separate cases allegedly involving fraudulent transactions totaling more than \$39 million.

- And last but certainly not least, Marc Dreier, the former Managing Partner of his New York law firm, was sentenced in July to serve 20 years in prison after pleading guilty to perpetrating a \$400 million investment fraud.

But the trend of professionals being caught up in the criminal justice system extends, as I said, to a broad category of people. And that is a troubling trend, which requires especially vigorous efforts.

I recently said the following in announcing a series of arrests on Wall Street: “No one is above the law. If you cheat, there are consequences. If you are a wealthy trader or a rich corporate executive, you are not special; you don’t get to operate under a different set of rules.”

I would like actually to revise that statement somewhat. If you are a wealthy trader or a rich corporate executive or a privileged professional of some sort, and you nonetheless intentionally break the law to secure even more wealth or power, you *are* special.

You’re special because you should have known better; you’re special because you have likely sown the seeds of corporate corruption in countless other places; you’re special because your arrest will be noticed; and you’re special because your arrest might deter others.

Just as people recoil from the powerful Congressman who sells his office and integrity for cash, they recoil also at seeing people with every privilege and perk cheat the system for even greater wealth.

Public anger and diminishing trust, moreover, are not merely interesting social phenomena. This mood has consequences, and it has particular consequences for the types of people and institutions that many of you in this room represent.

Right now, the mood is so sour that Congress is primed to provide prosecutors with even more resources to root out corporate corruption.

The Department of Justice’s Civil Division is ramping up, and we are planning to do the same with our own Civil Division to look at bad behavior in the financial industry and elsewhere.

And I’m not the only one businesses have to worry about. Every inspector general in the country is seeking expanded investigative authority, including subpoena power. And Congress wants to give it to them.

Every state Attorney General is learning to be more aggressive and more expansive.

And even local District Attorneys are increasingly getting into the act.

Why? Because there is anger, boiling-over anger that financial institutions and other business organizations have not done enough to police themselves and that regulators have not done enough either.

Judge Jack Weinstein seemed to channel that anger in a decision issued just two weeks ago.

In a case involving the sentencing of a securities dealer for fraud, Judge Weinstein wrote: "The staggering sums in this case reflect more than the magnitude of the defendant's fraud. They also evince an industry beset by avarice that has been allowed to run rampant by regulators and negligent supervisors alike."

Finally getting warmed up, Judge Weinstein went on to write: "Supervision is seriously negligent; greed and short-term gain are so enormous that fraud and arrogant disregard of others' rights and of ethics almost encourage criminal activities such as defendant's."

So, Judge Weinstein's indictment was far broader than the actual one prosecutors filed in the case.

There is an unmistakable perception that corruption has crept far too deeply into our corporate culture.

That perception is bad for the economy; it's bad for the markets; it's bad for business; and it's bad for the country.

But, the truth is that there is only so much a prosecutor's office can do, even one with the depth of talent that I am so lucky to have.

I believe we have the best people in the country, but my resources are not without limit.

We can wiretap some people, but we can't wiretap everyone, and even if we could, that would be a country that neither you nor I would want to live in.

At the end of the day, federal prosecutions are blunt and imperfect instruments for reforming industry or revolutionizing corporate culture.

We are not management consultants or ethics advisors or life coaches. We are just prosecutors.

And when we show up with an arrest warrant at a bank or a business or a hedge fund, it's like rolling a grenade through the front door. We understand that.

But the good news is that there is a vital role for non-prosecutors to play in improving the status quo.

And I am looking at the lawyers in this room who represent, advise, and work in many of the institutions that are now – or may one day find themselves – in hot water.

Long before my office issues a subpoena or an inspector general comes calling, lawyers like those in this room will likely have innumerable opportunities to guard against creeping corporate corruption.

You will have had opportunities to establish better compliance practices, to encourage better self-policing, to urge more transparency, and to otherwise help foster an ethic of integrity, candor, and restraint in the business world.

That, by the way, is usually also just good business.

The disturbing truth is that in the shadow of most massive frauds are lurking all manner of enablers – people who were helpful either to the perpetration of the fraud or to the successful hiding of it.

Sometimes these background players are able to be charged criminally, but often not. Sometimes they have crossed over a clear line into criminal conduct, but often not. Sometimes, even when they have crossed that line, proof of intent or direct knowledge is just too difficult to come by.

But a familiar pattern is repeated again and again, as insiders sometimes fail to stand up or to raise red flags and thus too often create (or tolerate) the conditions precedent for corporate corruption -- because that is what they have been programmed to do:

- Someone provides the comfort of a professional opinion that nudges up against the edge of legitimacy;
- Or someone aggressively exploits a vagueness in the tax code that pushes the bounds of propriety;
- Or someone creatively manipulates the numbers under an accounting theory that strains the laws of mathematics.

It happens every day:

- Someone pushes the envelope or looks the other way or just fails to do his job as a professional.

And time goes by and eventually the envelope-pushing gets more and more aggressive and the controls get less and less strict, and then finally the bad stuff really hits the fan. The firm collapses. Or there are arrests, and then the firm collapses.

And thousands of Monday morning quarterbacks – at the firm, on TV, and in Congress – wonder aloud what the hell happened.

Now, I am not suggesting, naively, that we can all just hold hands and sing songs about integrity and all will be well.

What I am suggesting, though, is that long before criminal prosecutors enter the picture, forward-thinking lawyers and professionals can play a role – over time – in fighting off the creep of corruption that is keeping my people so busy as we speak.

Unfortunately, with the economic pressure to perform higher than ever, and with enforcement resources taxed to their limit, cultures conducive to corruption can develop with relative ease.

To be clear, there is nothing wrong with businesses wanting to make money. The business of America, to coin a phrase, is business. Corporations should absolutely be maximizing profit and shareholder value. That's their job.

But they should also be practicing responsible corporate citizenship, promoting self-regulation, and avoiding the creation of a corporate culture that, if unchecked, can lead ultimately to financial ruin.

If you are too big to fail, then perhaps you are also too big to play it close to the edge or engage in cute tricks with numbers.

Not to put too fine a point on it, but these precincts are littered with the corporate corpses of those who didn't heed that lesson.

Just consider a few examples of common perfectly legitimate business imperatives, which if pursued with single-minded ferociousness, can easily be taken too far:

- **The imperative to beat the competition (no matter what):**
 - o Can encourage traders to gallup over the line to illegally obtain inside information to get an advantage on others.
 - o That is a fine imperative, but it has led more than a few companies astray when employees, taking that imperative to the extreme, have engaged in criminal theft of trade secrets. That is another phenomenon that seems to be on the rise.

- **The imperative to seal the deal (no matter what):**
 - o Can inspire executives to violate the Federal Corrupt Practices Act. Another fine imperative, but again when taken to the extreme, has most recently gotten a number of people in criminal trouble when FBI agents in a sting arrested officers who were allegedly bribing foreign officials to land a contract.
- **The imperative to keep all your profits (no matter what):**
 - o Can prompt the creation of elaborate tax shelters that deliberately violate the law and keep billions out of dollars out of the Treasury.
- **The imperative to keep stock value high (no matter what):**
 - o Can incentivize officers to hold back damaging information, mislead shareholders, and cook the books.

Conclusion

Now, let me conclude by saying this: as we remember today the legacy of the reformer Charles Evans Hughes with some general remarks from a newly-minted, rookie U.S. Attorney who does not know very much yet, it is perhaps worth thinking about the forms of corruption that afflict not only our democracy, but also our economy.

It is perhaps worth thinking about not only what my job as a federal prosecutor should be, but also what your responsibilities should be – as lawyers, as officers of the court, as counselors to the financial industry, and as good citizens.

So let me respectfully suggest that rooting out corporate corruption on Wall Street and in the rest of the business world may be just as important to our success as a nation as rooting out political corruption in our government.

And we all have a role to play in that effort.

We are all of us, members of a much-maligned profession. But I know that the spirit of citizenship and community within the New York Lawyers Association means that all of you have a obligation not only to specific clients, but also a larger and abiding commitment to the public good.

I continue to believe that there is no more noble profession than this one.

And I continue to believe also that no person is better situated to promote the common good, protect the public, and preserve liberty than the person who has genuinely dedicated himself – as Charles Evans Hughes did – to becoming both a master and a servant of the law.

Thank you.